



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

**FINAL DECISION**

**April 30, 2019 Government Records Council Meeting**

Casey D. Terry  
Complainant

Complaint No. 2017-147

v.

NJ Department of Corrections  
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the evidence of record supports that the Custodian never received the Complainant’s June 4, 2017 OPRA request and there is no credible evidence in the record to contradict the Custodian’s SOI certification. Thus, the Custodian did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. See Avila v. Camden Cnty. Prosecutor’s Office, GRC Complaint No. 2007-287 (July 2008).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of April 2019

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 3, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
April 30, 2019 Council Meeting**

**Casey D. Terry<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-147**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of “any and all [New Jersey Department of Corrections (“DOC”)] Special Investigation Division reports, [s]pecial reports, DOC [i]nstitutional [i]nfractions, \*.005 – Threatening with bodily harm, \*.306 – Conduct which disrupts [c]harges, and [s]pecial [r]eports, relevant and related to [the Complainant’s] placement in [Management Control Unit (“MCU”)] [on] January 28, 2007.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** N/A  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** July 17, 2019

**Background<sup>3</sup>**

**Request and Response:**

On June 4, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On July 17, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant identified the request at issue as his June 4, 2017 OPRA request, but appeared to dispute the Custodian’s May 25, 2017 response to a different request. The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Tasha Bradt.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Statement of Information:

On August 4, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he never received the Complainant’s June 4, 2017 OPRA request. The Custodian affirmed that he received a request from the Complainant on May 18, 2017 seeking “any and all reports including special reports, use of force reports, security threat groups, *etc.* related to [the Complainant’s] charges and placement in MCU . . . on January 28, 2007.” The Custodian affirmed that he denied that request as invalid on May 25, 2017.

The Custodian argued that this complaint appeared to relate to a request he never received, but also his May 25, 2017 response to the prior OPRA request. The Custodian contended that his initial denial was lawful. See Tillery v. N.J. Dep’t of Corr., GRC Complaint No. 2007-155 (February 2008) (citing MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)).

Further, the Custodian averred that under OPRA, a request must be “in writing and hand-delivered, mailed, transmitted electronically or otherwise conveyed to the appropriated custodian.” N.J.S.A. 47:1A-5(g). See also Mitchell v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2013-13 (August 2013); Kossup v. N.J. State Police, GRC Complaint No. 2014-299 (September 2015). The Custodian argued that he did not unlawfully deny access to the June 4, 2017 request at issue in this complaint because he never received it. The Custodian also noted that the Complainant provided no evidence to refute said certification. The Custodian thus contended that the Council should determine that this complaint was without reasonable factual basis to pursue. N.J.S.A. 47:1A-7(e).

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Avila v. Camden Cnty. Prosecutor’s Office, GRC Complaint No. 2007-287 (July 2008), the custodian certified that she did not receive any OPRA requests for request item Nos. 4 and 5. The Council held that “the Custodian has not unlawfully denied access to request Items No. 4 and No. 5 because the Custodian certified that no OPRA request was ever received from the Complainant.” Id. See also Petrycki, Jr., Esq. (O.B.O. James Donio) v. Twp. of Hammonton (Atlantic), GRC Complaint No. 2009-159 (May 2010).

In the instant matter, the Complainant identified a June 4, 2017 OPRA request as at issue in his Denial of Access Complaint. The Complainant attached the request to his Denial of Access Complaint; however, he also attached a May 25, 2017 letter response from the Custodian. This response clearly related to a previously submitted OPRA request, as opposed to the one the

Complainant identified as at issue here.<sup>4</sup> The Custodian subsequently certified in the SOI that he did not respond to the subject request because he never received any request from the Complainant with that date. The Custodian then provided arguments regarding his May 25, 2017 denial of access.

In reviewing the facts and arguments here, the GRC is satisfied that no violation regarding the subject request occurred. First, the Complainant provided no evidence that he submitted the subject OPRA request to the Custodian. Further, the Complainant composed his June 4, 2017 request on what appears to be a template version of the GRC's model request form. Finally, the Custodian certified in the SOI that he never received the subject request and there is no competent or credible evidence in the record to suggest otherwise. Thus, this complaint is directly on point with Avila, GRC 2007-287, and a similar conclusion should follow.

Therefore, the evidence of record supports that the Custodian never received the Complainant's June 4, 2017 OPRA request and there is no credible evidence in the record to contradict the Custodian's SOI certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Avila, GRC 2007-287.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the evidence of record supports that the Custodian never received the Complainant's June 4, 2017 OPRA request and there is no credible evidence in the record to contradict the Custodian's SOI certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008).

Prepared By: Frank F. Caruso  
Acting Executive Director

April 23, 2019

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<sup>4</sup> The GRC notes that the Complainant provided no factual or legal arguments providing insight into this discrepancy. The GRC has previously found complaints devoid of "any factual or legal basis alleging an unlawful denial" to result in a failure to state a claim. See Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014) at 3.